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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America,) No. CV-11-0126-PHX-FJM
10 Plaintiff,) **ORDER**
11 vs.)
12)
13 NISE USA, LLC,)
14 Defendant.)

15 The United States seeks to collect a debt owed by NISE USA, LLC, an importer of
16 tobacco products, under the Fair and Equitable Tobacco Reform Act of 2004, 7 U.S.C. §
17 518d (“FETRA”). The Act directs the Secretary of Agriculture, acting through the
18 Commodity Credit Corporation (“CCC”), to impose quarterly assessments on manufacturers
19 and importers of tobacco products to finance a program that helps tobacco farmers make the
20 transition from a regulated to a free market. Id. § 518d. Manufacturers and importers may
21 administratively contest an assessment within 30 business days of receiving notice of the
22 assessment. Id. § 518d(i). Judicial review is available only after administrative remedies are
23 exhausted. Id. § 518d(j).

24 The government contends that NISE failed to pay its FETRA assessments and failed
25 to provide records of its tobacco products imports, as required by 7 U.S.C. § 518d(h). The
26 government now seeks judgment in the amount of NISE’s current delinquent debt of
27 \$32,610.35, plus interest. The government also requests an injunction compelling NISE to
28 provide CCC with the records of its tobacco products imports required under FETRA.

1 The court has before it the United States' motion for summary judgment (doc. 12).
2 NISE has not responded and the time for doing so has passed. Under LRCiv 7.2(i), if a party
3 "does not serve and file the required answering memoranda . . . such non-compliance may
4 be deemed a consent to the . . . granting of the motion and the Court may dispose of the
5 motion summarily."

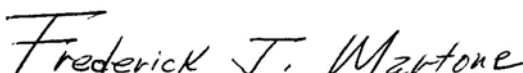
6 The government contends that NISE failed to pay its FETRA assessments for two
7 quarters in 2005, one quarter in 2006, and 3 quarters in 2007. NISE filed an administrative
8 challenge to the 2005 assessments only. Therefore, its challenges to the 2006 and 2007
9 assessments are not administratively exhausted, and judicial review of these claims is not
10 available. Id. §§ 518d(i), (j)(1).

11 On administrative appeal of the 2005 assessment, the Secretary of Agriculture
12 concluded that the assessment complied with FETRA. NISE has waived any judicial review
13 of the Secretary's decision by failing to file a petition for review or to respond to the
14 government's motion for summary judgment.

15 Accordingly, **IT IS ORDERED GRANTING** the United States' motion for summary
16 judgment (doc. 12). Judgment will be entered in favor of the United States and against NISE
17 in the amount of \$32,610.35, plus interest accrued to judgment, pursuant to 7 C.F.R. §
18 1463.9(d), and interest accrued until paid in full, pursuant to 28 U.S.C. § 1961.

19 **IT IS FURTHER ORDERED** that NISE shall, within 15 days from the date of this
20 order, submit to the Commodity Credit Corporation in accordance with 7 U.S.C. § 518d(h):
21 (1) its Report of Tobacco Product Removals Subject to Tax for the Tobacco Transition
22 Payment Program Assessment for June 2007—June 2010; (2) copies of its CBP Form 7501
23 for June 2005 and June 2007—June 2010; and (3) copies of its TTB Form 5220.6 for July
24 2005—June 2006 and October 2006—June 2010.

25 DATED this 4th day of October, 2011.

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28 Frederick J. Martone
United States District Judge